IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.833 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	Court's or Judge's Orders

Mr.S.A.Ghaisas for the appellant.

Mr.v..M.Tayade for the respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 12th July, 2007

P.C.

The appellant, being aggrieved by the reversal order passed by the appellate court, in this second appeal challenged the same. Considering the reasoning given by the appellate court of dismissing the suit on the ground of limitation cannot be said to be perverse or contrary to law. The finding as arrived in paragraphs 8 and 11 which are reproduced below, is correct and need no interference.

"8. The defendant has raised plea that the promissory note as alleged by the plaintiff was executed on 28/4/1996 and the suit has been filed on 13/10/1999 and as such the suit is clearly barred by law of limitation. The moot question that falls for my consideration is as to whether the suit is barred by law of limitation. I have carefully gone through the judgement of the trial court. While considering this judgement, the learned trial Judge has observed that the suit transaction is not a loan transaction but it was deposit and therefore the suit is governed in Article-22 of the Limitation Act. According to the learned trial Judge, the transaction was of deposit to and therefore the suit is well within

limitation from the date of demand by notice dated 4/1/1999, and the suit has been filed within three years from the date of demand and therefore the learned trial Judge observed that the suit is well within limitation.

11. I have carefully gone through the promissory note Exh.39. It is nothing but an acknowledgement for having received the amount of Rs.20,000/- on 22/4/1994 and Rs.5,000/- on 16/10/1994. Under these circumstances the plaintiff has to fall back on the original loan transaction which took place on 22/4/94 and 16/10/94. In such situation the Article-21 of the Limitation Act will be squarely applicable and suit filed beyond three years from 22/4/1994 and 16/10/1994 is clearly barred by

law of limitation. Under these circumstances, I have no hesitation to hold that the learned trial Judge has not properly appreciated the pleadings in the plaint in proper perspective. Consequently, I hold that the suit is barred by law of limitation. I, therefore, record finding of point No.3 in the affirmative."

Resultantly, the second appeal is dismissed.

[ANOOP V. MOHTA, J.]